

THE MAYOR AND COUNCIL OF ROCKVILLE

Ordinance No. _____

AN ORDINANCE of The Mayor and Council of Rockville (the “City”) to authorize, pursuant to the authority of Article 23A of the Annotated Code of Maryland, as amended, Subtitle 16 of Title 9 of the Environment Article of the Annotated Code of Maryland, as amended, and Article VII, Section 11 of the Charter of the City, as amended, the issuance and sale, upon its full faith and credit, of its general obligation, fully registered bond in aggregate principal amount not to exceed One Million One Hundred Thousand Dollars (\$1,100,000), to be designated as “The Mayor and Council of Rockville, Maryland Water Quality Bond, Series 2009 (ARRA)” (the “Bond”); the Bond to be issued and sold for the public purpose of (i) financing and refinancing all or a portion of the costs of the Woodley Gardens Park Stream Restoration project; and (ii) paying the costs incurred by the City in connection with the issuance, sale and delivery of the Bond; determining other matters relating to the issuance and sale of the Bond; determining that the best interests of the City will be served by selling the Bond at a private (negotiated) sale to the Maryland Water Quality Financing Administration (the “Administration”); authorizing and directing the Mayor and the City Manager of the City to enter into agreements with the Administration; determining all other details in connection with said sale; providing for the disbursement of the proceeds of the Bond; providing for the levy and collection of all *ad valorem* taxes necessary to provide for the payment of the principal of and interest on the Bond as it becomes due, such taxes to be levied upon all property subject to assessment for unlimited municipal taxation within the corporate limits of the City; appointing a paying agent and registrar for the Bond; making certain covenants regarding the tax-exempt status of interest on the Bond; and generally providing for the issuance, sale and delivery of the Bond.

RECITALS

For convenience of reference, The Mayor and Council of Rockville, a municipal corporation of the State of Maryland, is hereinafter referred to as the “City.”

The authority for the powers herein exercised is contained in Article VII, Section 11 of the Charter of the City (hereinafter sometimes referred to as the “Charter”), in Article 23A of the Annotated Code of Maryland, as amended (the “City Enabling Act”), and in Subtitle 16 of Title 9 of the Environment Article of the Annotated Code of Maryland, as amended (the “MWQFA Act”), such authority being hereinafter sometimes referred to collectively as the “Enabling Act.”

The Enabling Act enables the City to issue bonds for the purpose of financing and refinancing the costs of capital projects, and to sell such bonds at private (negotiated) sale to the Administration.

The City finds and determines that selling the Bond to the Administration at private (negotiated) sale pursuant to the terms of the MWQFA Act will allow the City to take advantage of below-market interest rates subsidized by the State of Maryland and the United States government, and will thereby afford the City substantial savings in its capital construction program.

The City finds it to be in the public interest to borrow money to (i) finance and refinance all or a portion of the costs of the Woodley Gardens Park Stream Restoration project; and (ii) pay the costs incurred by the City in connection with the issuance, sale and delivery of the Bond.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, that:

Section 1: Acting pursuant to the authority of the Enabling Act, it is hereby determined that the City shall borrow money and incur indebtedness for the purposes set forth in this Ordinance. To evidence such borrowing and indebtedness and acting pursuant to the authority of the Enabling Act, the City shall issue and sell, upon its full faith and credit, its fully registered general obligation bond in an aggregate principal amount not to exceed One Million One Hundred Thousand Dollars (\$1,100,000), to be known as “The Mayor and Council of Rockville, Maryland Water Quality Bond, Series 2009 (ARRA).” The City Manager of the City (the “City Manager”) is hereby authorized and directed to determine the principal amount of the Bond to be issued, in order to further the best interests of the City, but such amount shall in no event exceed \$1,100,000.

Section 2: The City hereby determines that the net proceeds from the sale of the Bond shall be used and applied to (i) financing and refinancing all or a portion of the costs of the Woodley Gardens Park Stream Restoration project (the “Project”); and (ii) pay the costs incurred by the City in connection with the issuance, sale and delivery of the Bond.

Section 3: The Bond shall be in substantially the form set forth in Exhibit F to the form of Loan Agreement in Exhibit A attached hereto, in the maximum principal amount, maturing

and bearing interest as determined in accordance with the Loan Agreement (defined below) and with such other insertions, omissions or variations as may be deemed necessary or appropriate and approved by the officers executing the same, the execution of the Bond by such officers to constitute conclusive evidence of such approval. The Mayor and Council hereby approves the form of and authorizes the execution and delivery of the Bond in substantially the form set forth in Exhibit F to the form of the Loan Agreement in Exhibit A, including all covenants and conditions set forth therein.

Section 4: The Bond shall be subject to such optional or mandatory redemption or prepayment features as may be specified in the Loan Agreement.

Section 5: The Bond shall bear interest as provided in the Loan Agreement, subject to adjustment in accordance with the Loan Agreement. The determination of the interest rate on the Bond by the Administration in accordance with the foregoing shall be conclusive.

The Bond shall be executed in the name of the City and on its behalf by the Mayor of the City (the "Mayor"). Such signature of the Mayor shall be manually affixed; an original of the corporate seal of Rockville shall also be imprinted thereon, attested by the manual signature of the Clerk of the City.

There shall accompany the Bond the approving legal opinion of Venable LLP, Bond Counsel, with respect to the Bond.

In the event any official whose signature shall appear on the Bond shall cease to be such official prior to the delivery of the Bond, or in the event any such official whose signature shall appear on the Bond shall have become such after the date of issue thereof, the Bond shall nevertheless be the valid and legally binding obligation of the City in accordance with its terms.

The Bond shall be issued as a fully registered bond without coupons, and shall be registered in the name of the owner thereof, on books kept for such purpose at the principal office of the Bond Registrar. Payment of the principal of the Bond shall be made to the person in whose name the Bond is registered on the registration books maintained by the Bond Registrar as the registered owner thereof, such principal to be payable at the principal office of the Paying Agent upon presentation and surrender of the Bond as the same become due and payable.

The City is hereby designated as the Bond Registrar and as the Paying Agent for the Bond, subject to further action by the City.

Section 6: It is hereby determined that it is in the best interests of the City to sell the Bond at private (negotiated) sale to the Administration pursuant to the MWQFA Act. The Mayor and the City Manager are each hereby authorized and directed to enter into such agreements with the Administration (including, without limitation, the Loan Agreement referred to below) as either of them shall deem to be in the best interests of the City in order to accomplish the public purposes of this Ordinance.

Notwithstanding anything herein to the contrary, as contemplated by the MWQFA Act, the borrowing and indebtedness represented by the Bond shall be made and incurred in accordance with the provisions of the Loan Agreement (the "Loan Agreement"), between the

City and the Administration. The Loan Agreement shall be in substantially the form set forth in Exhibit A attached hereto, with such insertions, omissions or variations as may be deemed necessary or appropriate and approved by the Mayor or such other designated officer executing the same (their execution of the Loan Agreement to constitute conclusive evidence of such approval). The City hereby approves the form of and authorizes the execution and delivery of the Loan Agreement in substantially the form set forth in Exhibit A. Said Loan Agreement and all the covenants and conditions set forth therein are hereby approved and adopted as the obligation of the City. The City shall use and apply proceeds of the Bond only as permitted by the Loan Agreement and the MWQFA Act. The principal of and interest on the Bond shall be paid in accordance with the terms and conditions of the Loan Agreement and the Bond. The annual Administrative Fee (as defined in the Loan Agreement) shall be paid in accordance with the Loan Agreement. The Loan Agreement and the Bond shall be valid and legally binding obligations of the City, enforceable in accordance with their terms.

Section 7: Although the City intends to pay the principal of and interest on the Bond in the first instance from available stormwater fees, the Bond shall be a general obligation of the City, issued and sold upon its full faith and credit. For the purpose of paying the principal of and interest on the Bond, the City shall levy or cause to be levied, and there is hereby levied, in each and every fiscal year in which the Bond is outstanding, an *ad valorem* tax or taxes upon all of the legally assessable property within the corporate limits of the City in rate and amount sufficient to provide for the payment, when due, of the principal of the Bond maturing in each such fiscal year and the interest on the Bond due and payable in each such fiscal year, and, in the event the proceeds from the taxes so levied in each such fiscal year shall prove inadequate for the above purposes, additional taxes shall be, and are hereby, levied in the subsequent fiscal year to make up any deficiency. It is the intent of this Ordinance that the rate of said *ad valorem* taxes shall be so computed in each fiscal year that the proceeds of such *ad valorem* taxes, together with any other funds then lawfully available for the purpose, shall provide sufficient funds to meet said maturing principal of and interest due and payable on the Bond.

The full faith and credit and unlimited taxing power of the City are hereby irrevocably pledged to the payment to maturity of the principal of and interest on the Bond as and when the same respectively mature or are due and payable and to the levy and collection of the taxes hereinabove described as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of the Bond. The City hereby solemnly covenants and agrees with each registered owner (from time to time) of the Bond to levy and collect the taxes hereinabove described and to take any other action that may be appropriate from time to time during the period that the Bond remains outstanding and unpaid to provide the funds necessary to make principal and interest payments thereon.

Section 8: The City covenants that the execution and delivery of the Loan Agreement and the issuance, sale, execution and delivery of the Bond, together with all other indebtedness of the Borrower, is within every debt and other limit prescribed by the Constitution or statutes of the State of Maryland, including the Charter and the City Enabling Act.

Section 9: (a) The City hereby covenants that it will take all actions necessary to comply with those requirements of the Internal Revenue Code of 1986, as amended (including Sections 103 and 141 through 150 thereof), and those requirements of the Income Tax

Regulations promulgated thereunder which are applicable to the Bond, in order to maintain the exemption of interest on the Bond from federal income taxation. This covenant is for the benefit of the holders from time to time of the Bond.

(b) The City has been advised and understands that U.S. Treasury Income Tax Regulation Section 1.150-2 requires that in order to assure the eligibility of expenditures made by the City for reimbursement from the proceeds of tax-exempt obligations, the City generally must adopt an official intent in compliance with the such regulation within 60 days after payment of an expenditure. In order to comply with this requirement and thereby to assure the eligibility of expenditures made with respect to the Project for reimbursement from the proceeds of the Bond, the City (i) states that it reasonably expects that (A) it will issue the Bond to finance all or a portion of the costs of the Project, (B) it may pay capital expenditures for the Project prior to the issuance of such Bond and reimburse such expenditures from the proceeds of the Bond, and (C) the maximum principal amount of the Bond that the City expects to issue for the Project is \$1,100,000 and (ii) declares that this Ordinance shall constitute the declaration by the City of its official intent to reimburse the costs of the Project with the proceeds of the City's debt for purposes of complying with the requirements of U.S. Treasury Income Tax Regulation Section 1.150-2.

Section 10: The Mayor, the City Manager, the Director of Finance, the City Attorney, the City Clerk, any person acting in any such capacity and their respective designees and all other officers and employees of the City are hereby authorized and directed to take such further action and to prepare, execute, deliver and file such documents as the Mayor or the City Manager shall deem necessary to be taken, prepared, executed, delivered and filed in consummation of the transactions contemplated by this Ordinance.

Section 11: This Ordinance shall take effect from and after the date of final passage.

THE FOREGOING ORDINANCE was introduced at a meeting of the Mayor and Council of Rockville held on the 26th day of October, 2009, and, its title having been included on the published agenda for the meeting of October 26, 2009, and all other requirements of law for published notice or hearing having been complied with, was finally passed by the Mayor and Council of Rockville on the 26th day of October, 2009.

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I HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance adopted by the Mayor and Council at its meeting of October 26, 2009.

City Clerk

EXHIBIT A
FORM OF LOAN AGREEMENT